

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

LBRY, INC.,

Defendant.

Civil Action No. 21-cv-00260

**SECURITIES AND EXCHANGE COMMISSION’S MOTION FOR LEAVE TO REPLY
TO DEFENDANT LBRY, INC.’S OBJECTION TO PLAINTIFF’S MOTION TO QUASH**

Plaintiff Securities and Exchange Commission (the “Commission”) respectfully requests that the Court grant it leave to file a short brief in reply to Defendant LBRY, Inc.’s (“LBRY”) objection to the Commission’s motion to quash the deposition subpoena issued to William Hinman (“Director Hinman”). Dkt. Nos. 36, 40. As grounds for this request, the Commission states as follows:

1. During a hearing in this case on November 15, 2021, the Court indicated that it would likely resolve the Commission’s motion to quash, Dkt. No. 36, on the papers.
2. On November 22, 2021, LBRY filed an objection to the Commission’s motion to quash that misstated the applicable standard to be applied to this case. Indeed, the burden is on LBRY to demonstrate extraordinary circumstances to depose Director Hinman.
3. LBRY’s objection also misapprehends the law concerning “as applied” void for vagueness defenses. In doing so, LBRY misreads relevant caselaw and, consequently, inaccurately argues that Director Hinman’s personal views and/or privileged

conversations he may have had within the Commission about his speech are relevant to LBRY's void-for-vagueness defense.

4. Finally, LBRY inaccurately asserts that Director Hinman is not a senior officer of the Commission in an effort to avoid the application of the *Morgan* Doctrine by misreading the very case that LBRY cites to make this faulty argument.
5. The Commission, therefore, seeks leave to file a short reply brief to correct the record so that the Court can make an informed decision.
6. LBRY informed the Commission that it would not assent to the Commission's motion to file a reply. LBRY did not provide any explanation for its position.

In light of the foregoing, the Commission respectfully seeks leave to file the attached reply brief.

Dated: November 29, 2021

Respectfully submitted,

**SECURITIES AND EXCHANGE
COMMISSION**

By its Attorneys,

/s/ Eric A. Forni

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CERTIFICATE OF SERVICE

I hereby certify that, on November 29, 2021, I caused true and correct copies of the foregoing to be served on counsel of record for all parties that have appeared to date through the Court's CM/ECF system.

/s/ Eric A. Forni
Eric A. Forni